

- (c) **Documentation of Claims.** Claims for additional compensation for differing site conditions, changes in the character of work, or for extra work will be assessed and their value determined in accordance with the provisions of Section 109.04. Claims for extension of Contract time will be evaluated in the manner prescribed in Section 108.07.
- (d) **Review of Request for Additional Compensation or Time.** The Resident Engineer shall make a written response to the Contractor's request for additional compensation or time after a review of the request which shall occur within the following time periods:
  - 1. Forty-five (45) calendar days from the receipt of the Contractor's claim including all required supporting documentation when the claim is in the amount of one hundred thousand dollars (\$100,000.00) or less;
  - 2. Ninety (90) calendar days from the receipt of the Contractor's claim including all required supporting documentation when the claim is in an amount of more than one hundred thousand dollars (\$100,000).

The Engineer and the Contractor may agree in writing to an extension of the time limits set forth above.

If no agreement is reached between the Contractor and the Department within fifteen (15) days after the Department's period of review, as set forth above and any extensions thereof, the Contractor may proceed as if the claim had been formally denied, in accordance with the currently adopted dispute resolution procedure, as incorporated in the Contract.

If the Engineer does not issue a written decision on the Contractor's claim within the appropriate time period set forth herein, the claim shall be deemed denied and the Contractor may appeal such as a formal denial, in accordance with the currently adopted dispute resolution procedure, as incorporated in the Contract.

Nothing in this Subsection shall be construed as establishing any claim contrary to the terms of Subsection 104.06. or 108.07.

## **SECTION 106 CONTROL OF MATERIALS**

### **106.01. SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.**

All materials used shall meet the quality requirements of the Contract. The Contractor shall notify the Resident Engineer of the proposed sources of materials to be used in the work before delivery. The Resident Engineer has the option of conditionally approving materials at the supply source. Conditionally approved material incorporated into the work, if subsequently found to be unacceptable, shall be removed and replaced or otherwise corrected at Contractors expense to satisfaction of Resident Engineer. All materials used in the work shall be new unless otherwise specified in the Contract.

- (a) When the Contractor has an option of using one of two or more materials or products as covered by a bid item of work in the Proposal, the successful bidder shall advise the Department in writing of the specific materials or product that he/she will use on the Project.

- (b) **“BUY AMERICA”** provision as required by Title 23 Code of Federal Regulations § 634.410: Except as expressly provided herein, all manufacturing processes of steel or iron furnished under this Contract shall occur in the United States, including the application of coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron products. Pig iron, processed, pelletized and reduced iron ore materials and processed alloys, unless such alloys have been processed or refined to include substantial amounts of steel and/or iron materials, are exempt and may be used irrespective of source in the domestic manufacturing process for steel and/or iron materials.
1. The requirements do not prevent a minimal use of foreign steel if the cost of such materials does not exceed one-tenth of one percent (0.1 percent) of the total Contract cost or \$2,500.00, whichever is greater. The Contractor shall submit the origin and value of any foreign materials used.
  2. The Contractor shall submit a certification stating that all manufacturing processes involved with the production of steel or iron materials occurred in the United States.

#### **106.02. LOCAL MATERIAL SOURCES.**

Possible sources of local materials may be designated. The Contractor shall determine the amount of equipment and work required to produce a material meeting the specifications. Since it is not feasible to determine from natural deposit sampling the acceptable limits for an entire deposit, variations in materials quality within the deposits are to be considered usual and to be expected. The Resident Engineer may order procurement of material from any portion of a deposit and will reject portions of the deposit as unacceptable if the material fails to meet Specification requirements.

The Department may acquire and make available the right to take materials from sources designated and described in the Contract together with the right to use the property as specified, for plant site, stockpiles, and hauling roads. If this procedure has been chosen by the Department, the Contract will define the acquisitions or rights provided.

If material is used from other than Contract designated sources, the Contractor shall acquire the necessary rights to take materials from the sources and pay related costs, including costs for an increase in length of haul and all costs of exploring and developing the sources.

The use of material from other than designated sources will not be permitted until the Department has performed sufficient tests to indicate that the material is of equal or better quality than the Department designated source and that conditional acceptance of the material may be made. Borrow pits, gravel pits, and quarry sites shall be located so they are not visible from the highway, and in any case not closer than 500 feet (150 m) to the near right-of-way of a road or highway on the State or County System, except by written permission of the Engineer.

Pits and quarries shall be excavated so water does not collect and stand on the site during the work. Following completion of the work the site shall be left in a neat and presentable condition.

#### **106.03. SAMPLES, TESTS, CITED SPECIFICATIONS.**

Materials will be inspected, tested, and approved by the Resident Engineer before incorporation in the work. Materials found to be unacceptable will not be paid for and shall be removed from the work at the Contractor's expense.

Unless otherwise designated, materials tests will be performed by and at the expense of the Department using the most recent standard test methods of the Department, AASHTO or ASTM in effect on the date of advertisement for Proposals. If there is a difference in the test methods, the order of precedence in the test procedures used will be as follows:

- (a) The Department's Standard Materials Test Methods
- (b) AASHTO
- (c) ASTM

The sampling and sample splitting of materials tested by the Department shall be performed or observed by a qualified representative of the Department.

The Department may retest and reject unacceptable materials previously tested and conditionally accepted at the source of supply. Materials to be used are subject to inspection, testing or rejection prior to or during incorporation into the work. Copies of any or all test results will be furnished to the Contractor's representative upon request.

Quality control during the progress of construction shall be the responsibility of the Contractor and the Contractor shall not rely on the Department's acceptance testing for this purpose.

#### 106.04. MATERIALS CERTIFICATIONS.

- (a) **Description.** This Subsection covers the requirements and procedures for the issuance and distribution of certifications of various types when designated as a part of the Plans and Contract for various materials.
- (b) **General Requirements.**
  - 1. The Contractor shall be responsible for obtaining all certifications and arranging for their delivery to the proper destinations as required by this Specification.
  - 2. Materials certifications shall be signed by a responsible representative of the company which issues the certification. The official company title of the signer must be clearly shown immediately beneath his/her signature.
  - 3. All certifications shall be furnished in duplicate and each copy shall show the following information:

Project number Name of Contractor Identification markings on shipment Quantity of material represented by the certification
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Quantity information need not be furnished when certified mill tests are submitted as a Type A certification, provided that the identifying heat number is permanently rolled, stamped or otherwise affixed to each individual piece of material in the shipment covered by the certification.

(c) Types of Certifications. Unless otherwise specified, a certification shall be one of the following types:

1. **Type A** certification shall be prepared by the manufacturer and shall consist of a certified copy of a report covering tests conducted by an approved laboratory. Such test shall have been conducted on samples obtained from the lot or lots of material in the shipment.
2. **Type B** certification shall consist of a certification prepared by the manufacturer and shall show the limits of test values as determined by an approved manufacturer's laboratory, a qualified commercial laboratory or other approved laboratory.
3. **Type C** certification shall be prepared by the manufacturer and shall certify that the material in the shipment conforms to the same formula and/or is essentially the same as the material previously approved by the Materials Engineer.
4. **Type D** certification shall be prepared by the manufacturer and shall state that the materials meet the applicable Specifications. These Specifications shall be listed by number, Section reference or other appropriate identification acceptable to the Resident Engineer.
5. **Type E** certification shall be prepared by the Fabricator to cover a composite item incorporating two or more materials which have been previously approved on an individual basis, but which lose their identity when they are incorporated into the composite item. All materials used in the fabrications shall be listed and identified. Composite items would include signs, overhead sign structures, etc. The certification shall state that all materials used in the fabrication of the item in question were previously approved for use. The fabricator shall keep test reports and/or other pertinent identifying records of the individual items incorporated into the composite item until the item has been approved and accepted by the Engineer.

(d) **Distribution of Certifications.** Certifications shall be mailed to the Resident Engineer, with one copy to be mailed to:

Materials Engineer Oklahoma Department of Transportation 200 Northeast 21st Street Oklahoma City, Oklahoma 73105
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These certifications will be checked for conformance with the applicable Specifications and approved copies forwarded to the Resident Engineer and Contractor.

(e) **Basis of Acceptance.** Whenever a certification of one of the above types is required as part of a material Specification, such material may be accepted on the basis of certification provided that all applicable requirements are met, and that visual inspection at destination shows the workmanship and condition of the material to be satisfactory.

All material furnished under certification shall be tagged, stenciled, stamped, or otherwise marked with a lot number, heat number, order number, or other appropriate identification which can be readily recognized and checked against the certification. Material accepted on certification shall not be incorporated in the work until the certificates have been approved by the Resident Engineer.

**106.05. PLANT INSPECTION.**

The Engineer may inspect materials at the acquisition or manufacturing source. Manufacturing plants may be inspected for compliance with specified manufacturing methods. Material samples will be obtained for testing for compliance with materials quality requirements.

In the event plant inspection is undertaken, the following conditions shall be met:

- (a) The Engineer shall have the cooperation and assistance of the Contractor and producer of the materials.
- (b) The Engineer shall have full access at any time to all parts of the plant concerning the manufacture or production of the materials being furnished.
- (c) If required by the Contract, a building shall be provided for the use of the Inspector, located conveniently near the plant, and meeting the requirements of Subsection 106.06.
- (d) Adequate safety measures shall be provided and maintained.
- (e) Crushing or screening facilities may be required to be equipped with an automatic or semi-automatic mechanical sampling device.

In the event the Contractor chooses to use fabricated steel or precast concrete products requiring inspection and approval at a manufacturing plant or source of supply located more than 300 miles (500 kilometers) from Oklahoma City, Oklahoma, the additional expense of such inspection over the cost of providing such inspection at Oklahoma City will be borne by the Contractor. The most recent edition of the "Rand McNally Road Atlas" will be used to calculate the road miles traveled. Vicinity mileage will also be claimed when applicable. Travel expenses will be charged in accordance with the current Department's Administrative Order # B-310-1-(1) for State Travel Expenses-Reimbursement, plus the current contract price for the inspector's driving time. It is the Contractor's responsibility to contact the Materials Engineer to obtain the current contract prices and contact his/her supplier to determine the fabrication time, in order to complete his/her estimate for inspection expenses.

The Department reserves the right to retest materials that have been tested and conditionally approved at the source prior to incorporation into the project and to reject all materials that, when retested, do not meet the Contract requirements.

**106.06. FIELD OFFICE LABORATORY.**

The Contractor shall furnish and maintain, for each Field Office or Laboratory required, an approved weatherproof building or trailer as provided in Section 640.

**106.07. FOREIGN MATERIALS.**

Unless otherwise noted in the Contract, all testing shall be performed within the United States and witnessed by the Engineer. When defined in the Contract, the Contractor shall arrange and pay for any required sampling and testing that the Department is not equipped to perform. Materials or processes that require that the testing be performed or witnessed at a foreign source will be inspected at the foreign site and the Contractor shall reimburse the Department for all inspection expenses incurred outside the United States.

Each lot of foreign material shall be accompanied by a certificate of compliance meeting Subsection 106.04. Certified mill test reports shall be attached to the certificate of compliance for the materials requiring mill test reports.

Structural materials will not be accepted unless they are properly identified with mill test reports and certificates of compliance.

Structural materials requiring mill test reports will be accepted only from domestic manufacturers or manufacturers who have previously established the adequacy of their plant quality control to assure delivery of uniform material meeting Department requirements.

Adequacy of quality control shall be established by submission of detailed written proof, or through a plant inspection by the Department.

#### **106.08. STORAGE AND HANDLING OF MATERIALS.**

Materials shall be stored and handled to preserve their quality and fitness for the work. Bulk materials shall be transported in vehicles constructed to prevent loss or segregation after loading and measuring.

Materials shall be stored to facilitate prompt inspection and will be subject to inspection and retesting before incorporation in the work in accordance with Subsection 106.03.

Approved portions of the right-of-way may be used for the storage of materials and the Contractor's plant and equipment. Additional storage space required shall be provided at the Contractor's expense and option. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested, copies of such written permission shall be furnished to the Resident Engineer.

Storage and plant sites on right-of-way shall be restored to their original condition by and at the Contractor's expense.

#### **106.09. DELIVERING AND STOCKPILING AGGREGATES.**

All aggregates shall be handled in such a manner as to preserve their quality, gradation and fitness for the work. The provisions for transporting aggregates shall be such to assure a continuous and adequate supply of material to the work.

Aggregate stockpiles shall be built up in such a manner that acceptable materials will be delivered to the plant or the Project. Aggregates from different sources and different gradations shall not be stockpiled together.

The gradation requirements, for the individual stockpiles and proportioning from the stockpiles, shall be the responsibility of the Contractor. Aggregates that have become segregated, or mixed with earth or other foreign material, shall be considered unacceptable, and will not be utilized in the work until Contractor causes aggregate piles to be integrated, and all foreign materials to be removed.

#### **106.10. UNACCEPTABLE MATERIALS.**

Materials not meeting the requirements will be rejected and shall be removed immediately from the Project unless the defects are corrected and approved by the Resident Engineer.

**106.11. DEPARTMENT-FURNISHED MATERIAL.**

The Contractor shall furnish all materials required to complete the work, except those specified in the Contract as being furnished by the Department.

Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the Contract.

The cost of handling and placing all materials after they are made available to the Contractor shall be included in the Contract price for the bid item in connection with which they are used.

The Contractor is responsible for the storage, handling, and security of all material made available to him/her, and deductions will be made from any monies due him/her for any shortages or deficiencies, from any cause, for any damage which may occur after delivery, and for any demurrage charges.

**106.12. GUARANTEES AND WARRANTIES.**

The Contractor shall obtain and assign to the Department all manufacturers' or producers' warranties or guarantees on all items, materials, electrical or mechanical equipment consistent with those provided as customary trade practice. Additionally, the Contractor shall furnish a Contractor's warranty or guarantee providing that all mechanical and electrical equipment and material, light bulbs excepted, furnished by the Contractor shall be free from any defects or imperfections in workmanship and materials for a period of six (6) months after acceptance by the Department and the local government. Should any defect develop during this six (6) months performance period, the malfunction or defect shall be corrected by and at the expense of the Contractor, including all labor, materials, and associated costs.

The Contractor shall supply manuals for all pieces of equipment included in the Project. Such manuals shall include operational procedures, complete nomenclature, wiring diagrams, schematics showing test voltages or procedural methods, a functional description of circuits, parts lists, cross reference to standard part numbers, flow diagrams, and, where appropriate, testing procedures and other pertinent data.

The provisions of this section shall not be construed in lieu of the requirements of the Maintenance Bond as found in state funded contracts, but run concurrently and are included therein.

**SECTION 107  
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC****107.01. LAWS, RULES AND REGULATIONS TO BE OBSERVED.**

The Contractor shall keep fully informed with, and observe and comply with all of the following that, (1) individuals engaged or employed on the Project, or (2) affects the conduct of the work on the Project:

Federal and State laws;  
Local laws and ordinances; and  
Regulations, orders and  
decrees of bodies or tribunals having any jurisdiction or authority.